

Office of Chief Counsel
Internal Revenue Service

memorandum

TL-N-2510-99

JForsberg

date: October 27, 1999

to: Chief, Examination Division, North Central District
Attn: Gary Goldsmith, Group Manager, Group 1220

from: District Counsel, North Central District, St. Paul

subject: [REDACTED]
Sequa Interest Claim

Our advice has been requested as to whether, under the facts set forth below, a claim for refund filed by [REDACTED] for its TYE [REDACTED] is barred by the statute of limitations. For the reasons set forth below, we are of the opinion that the claim is barred.

FACTS

[REDACTED] (the "taxpayer") has a 52/53 week taxable year with a [REDACTED] taxable year ending [REDACTED]. Pursuant to extension, the taxpayer's [REDACTED] return was timely filed on or about [REDACTED]. The [REDACTED] return showed a tax liability of \$ [REDACTED], and an overpayment of \$ [REDACTED] which the taxpayer elected to apply to its [REDACTED] estimated tax liability.

On [REDACTED], a deficiency in income tax of \$ [REDACTED] was assessed for [REDACTED]. The deficiency was paid by an advance payment made on [REDACTED], and the interest thereon was paid on [REDACTED]. On [REDACTED], a second deficiency in income tax for [REDACTED] of \$ [REDACTED] was assessed. This deficiency and the interest thereon was paid by an advance payment made on [REDACTED]. On [REDACTED], the taxpayer filed an amended return for [REDACTED] seeking a refund arising from a reduction in the income reported from a partnership. On [REDACTED], a \$ [REDACTED] refund of tax and interest was issued to the taxpayer. No consent to extend the statute of limitations has been executed for [REDACTED].

The taxpayer's [REDACTED] and [REDACTED] returns are currently under examination. The statute of limitations for both years has been held open by statute extensions. Because of adjustments in the [REDACTED] examination, the taxpayer will have excess foreign tax credits available to carryback to [REDACTED] from [REDACTED].

On or about [REDACTED], the taxpayer filed protective claims for deficiency interest for [REDACTED], [REDACTED], and [REDACTED] based on the May Department Stores and Sequa Corp. cases.

DISCUSSION

As set forth in I.R.C. § 6511(a), the general statute of limitations on the filing of a claim for refund provides that claims for refund must be filed within 3 years from the time the return was filed or within 2 years from the time the tax was paid. In the present case, the taxpayer's Sequa interest claim was not filed within the general 3-year/2-year statute of limitations. The taxpayer argues, however, that the statute remains open by virtue of the excess foreign tax credits available to be carried back to [REDACTED] from [REDACTED], an open year. Presumably the taxpayer is relying on I.R.C. § 6511(d)(3) which provides, in part:

(A) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO FOREIGN TAXES PAID OR ACCRUED.---If the claim for credit or refund relates to an overpayment attributable to any taxes paid or accrued to any foreign country or to any possession of the United States for which credit is allowed against the tax imposed by subtitle A in accordance with the provisions of section 901 or the provisions of any treaty to which the United States is a party, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be 10 years from the date prescribed by law for filing the return for the year in which such taxes were actually paid or accrued.

(B) EXCEPTION IN THE CASE OF FOREIGN TAXES PAID OR ACCRUED.---In the case of a claim described in subparagraph (A), the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the allowance of a credit for the taxes described in subparagraph (A).


The exception to the general 3-year rule set out in subparagraph (d)(3)(A) of section 6511 is, by its terms, specifically limited claims for refunds which relate "to an overpayment attributable to any taxes paid or accrued to any foreign country or possession of the United States for which credit is allowed against the tax imposed by subtitle A in accordance with the provisions of section 901..." Likewise, the exception set forth in subparagraph (d)(3)(A) to the general rules as relating to the amount which can be refunded applies only "to the extent of the amount of the overpayment attributable to the allowance of a credit for the taxes

described in subparagraph (A)." In the present case, the claim in issue is for deficiency interest based on the Segua case. The claim has no nexus whatsoever to the foreign tax credits available to be carried back to [REDACTED]. Accordingly, section 6511(d)(3) is irrelevant and under the general statute of limitations of section 6511(a) and (b) the taxpayer's Segua interest claim is barred. Fee v. United States, 81-1 U.S.T.C. ¶ 9355 (S.D. Cal. 1981).

If you have any questions respecting this matter, please call Jack Forsberg at 290-3473, ext. 227.

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By:


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cc: Assistant Chief Counsel
(Field Service)